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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SOOHOO, TONY GLEN

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 09/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/982,582

Applicant(s)

NILAND, JOHN H.

Examiner

Tony G Soohoo

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hines et al 6042259, see figure 1, element 15.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hines et al 6042259 in view of Breneman Des 257735 and a 1970 Hot Wheels Cement mixer toy depicted on <http://www.malcomdesigns.com/dicast/hotwheels/heavyweight.html> and <http://home.surewest.net/funke/hotwheels/cement.jpg>.

The Hines reference teaches the provision and use of a cement truck whereby identifying indicia 15 is provided on the drum 14 such that the truck may be easily identified.

The Hines references discloses all of the recited subject matter as defined within the scope of the claims with the exception of a helical coil indicia on the drum (claims 2, 7); with the exception of the indicia simulating a article other than the drum (claim 8), in particular a football (claims 3-4); with the exception of the indicia being viewable from both sides of the truck.

The reference to Brenemen teaches that a cement mixer truck may have a indicia about the whole circumference of the drum. Additionally, the graphic indicia may be spiral in form, see figure 4. Note that the indicia is also viewable from both sides of the drum.

The article of a toy 1970 Hot Wheels ® Cement mixer as depicted on <http://www.malcomdesigns.com/dicast/hotwheels/heavyweight.html> and <http://home.surewest.net/funke/hotwheels/cement.jpg>, shows that a cement mixer may have indicia such as a Hot Wheels ® logo, or the word cement mixer disposed about the circumference of the drum in an orientation other than the horizontal and may be viewable from both sides of the truck.

In view of the teaching of Brenemen and the 1970 Hot Wheels ® Cement mixer toy that graphic indicia may be placed all about the drum circumference with the inclusion of words or a company logo, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the indicia of Brenemen such that the indicia is a graphic spiral, or include graphic logo or words all about the drum circumference such that the cement mixer drum is more astatically pleasing.

With regards to indicia being a simulative article other than a cement mixer drum or a football, it is deemed that it would have been obvious to one of ordinary skill in the art of vehicle graphic arts to modify the indicia of the Brenemen's mixer drum to a more represent a more pleasing graphic of a company, drawing or mural upon the drum sides such that the cement truck is more visually pleasing.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose graphics upon a mixer drum.

A photograph of a used 1994 Advance Forward Placement OSHKOSH cement mixer truck from Tucker concrete company, Tucker GA 30085, ph# (678) 409-6486;

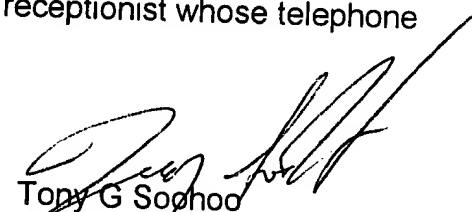
A photograph of a used 1995 and used 1987 Other S-Series OSHKOSH cement mixer truck from Metro Ready Mix, Nashville TN 37208 ph# (65) 255-1900;

A photograph of a used 1995 Other S-Series OSHKOSH cement mixer truck, serial no 64257 #26, 64258 #27, from Orgain Ready Mix Concrete Co. Clarksville TN 37040, ph#(931)647-597;

A photograph of a D.A.R.E advertisement upon a cement mixer truck from <http://www.oshkoshtruck.com/htm/concrte/ssergal19.cfm>.

A photograph of a Mack cement truck, series R having the indicia UNITED upon a copyright web page 1996-2002, Mack Trucks, Inc. taken from [Http://www.macktrucks.com/history/1960\\_1969/1960.htm](Http://www.macktrucks.com/history/1960_1969/1960.htm) and [Http://www.macktrucks.com/history/1960\\_1969/1966/1966c\\_pic.htm](Http://www.macktrucks.com/history/1960_1969/1966/1966c_pic.htm).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G Soohoo whose telephone number is (703) 308-2882. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri.. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7718 for regular communications and (703) 305-3599 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Tony G Soohoo  
Primary Examiner  
Art Unit 1723

tgs